

***United States Court of Appeals
for the Second Circuit***



**PETITIONER'S
REPLY BRIEF**

76-4049, 4061, 4074

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket Nos. 76-4049, 4061, 4074

ITT WORLD COMMUNICATIONS INC., RCA GLOBAL COMMUNICATIONS, INC., and WESTERN UNION INTERNATIONAL, INC.,

—against— *Petitioners,*

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

—and— *Respondents,*

AMERICAN TELEPHONE AND TELEGRAPH COMPANY,
XEROX CORPORATION, AMERICAN PETROLEUM INSTITUTE and HAWAIIAN TELEPHONE COMPANY,

Intervenors.

PETITION FOR REVIEW OF MEMORANDUM OPINION AND ORDER OF
THE FEDERAL COMMUNICATIONS COMMISSION

**REPLY BRIEF OF PETITIONER
WESTERN UNION INTERNATIONAL, INC.**

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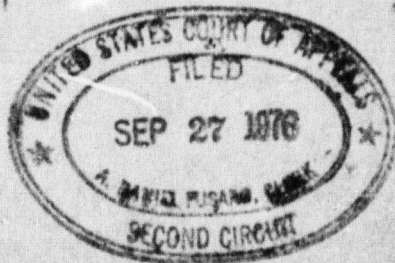


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Preliminary Statement

This brief is submitted on behalf of petitioner Western Union International, Inc. ("WUI") in reply to the answering brief of the Federal Communications Commission ("FCC") and the four intervenors' briefs. We demonstrate below that these opposing briefs are unconvincing in their attempt to rebut petitioners' arguments for reversal of the FCC Order.

ARGUMENT

POINT I

THE FCC DEPARTURE FROM PAST POLICY TO MAKE AT&T ELIGIBLE TO PROVIDE OVERSEAS "DATAPHONE-TYPE" SERVICE LACKS A RATIONAL BASIS.

Both the IRCs and AT&T own and operate circuits in the underseas cables and lease and operate circuits in the satellites through which voice and/or record communications are transmitted. Thus, there are no technological differences between the international facilities used by AT&T and the IRCs. As a matter of FCC policy, however, the international telecommunications market generally has been divided between voice and record transmissions, with exceptions where the public interest required otherwise. Therefore, AT&T has been permitted to operate a monopoly providing overseas voice services and the IRCs have competitively provided the overseas record services and, on a private line basis, alternate voice/data services.

As WUI pointed out in its main brief (*e.g.*, at p. 41), "dataphone-type" services are predominantly "record" services. The briefs submitted on behalf of Xerox Corporation ("Xerox") and American Petroleum Institute ("API") support this proposition. Both Xerox, "a manufacturer of data terminals,"¹ and API, which represents over "400 of the leading oil and natural gas companies,"² have intervened here, complaining of the need for better facilities for the overseas transmission, not of voice or even alternate voice/data communications, but simply of data, facsimile and other record communications.³

¹ Xerox brief, p. 1.

² API brief, p. 2.

³ See, *e.g.*, API brief, p. 3; Xerox brief, p. 1; see also AT&T brief, pp. 36-37 (referring to "dataphone-type" services as "record type services").

The FCC held that AT&T should be allowed to provide "basic dataphone-type" service internationally, notwithstanding the acknowledgment in the FCC brief of its "long standing general policy of separating voice and record services in international communications" and that this policy continues to remain "generally applicable, with exceptions as required or permitted by the public interest."⁴ To further quote the FCC brief, "[t]he policy reflects history, technological evolution, and, to some extent, concern for the survival of the record carriers in direct competition with AT&T."⁵ WUI, as noted above, agrees with the FCC policy. WUI disagrees with the FCC only as to whether the FCC properly considered the public interest in departing from its "long standing general policy."⁶

A. The IRCs Propose to Provide the Same "Basic Dataphone-Type" Service Proposed by AT&T.

The FCC Order justifies the determination to allow AT&T to enter the overseas record communications market with a "basic dataphone-type" service principally on the basis of the FCC's finding that the IRCs and AT&T propose to offer significantly different overseas "dataphone-type" services. (JA 4). The FCC brief argues primarily that the question of whether the services proposed by the IRCs and AT&T are the same or different is not properly before this Court, and alternatively argues that the FCC's finding of significant differences between the proposed services

⁴ FCC brief, pp. 4, 8.

⁵ FCC brief, p. 4 (footnotes omitted).

⁶ Significantly, the FCC did not endorse, at least not expressly, AT&T's outlandish interpretation of FCC policy to the effect that since AT&T's MTS network is a monopoly, competition with MTS should be discouraged and the monopoly service expanded wherever possible. See AT&T brief, pp. 25-26. Unfortunately, however, if the FCC Order is not set aside, the practical consequence will be that AT&T's unilateral and unendorsed view of FCC policy will appear to have been adopted.

"has substantial support in the record." Both of these arguments are specious.

The FCC contends that this critical basis upon which the FCC Order is premised is not ripe for judicial review because under Section 405 of the Communications Act, 47 U.S.C. § 405, the IRCs allegedly should have afforded the FCC another opportunity to compare the differences and similarities between the proposed services through an administrative petition for reconsideration before they can have standing to demonstrate the FCC's error in this Court. Clearly, Section 405 imposes no such burden because this is not a matter upon which the FCC did not have an "opportunity to pass."⁸

As detailed in our main brief (esp. at pp. 27-29), the record plainly reveals that the IRCs propose to provide the same "dataphone-type" service proposed by AT&T.⁹ Additionally, and we stress additionally, some of the IRCs, particularly RCA Globecom, propose to provide supplemental services which will make their offerings "more efficient" and "technically superior."¹⁰ The FCC was amply informed of the nature of the services the IRCs propose to provide, and it is unfair for the FCC now to sug-

⁷ FCC brief, pp. 30-33.

⁸ 47 U.S.C. § 405.

⁹ In addition to the quotations from the comments filed by the IRCs which are reproduced in WUI's main brief at pp. 28-29, the following excerpts also demonstrate that the IRCs propose to offer all forms of demand AVD service, including and particularly what the FCC Order referred to as "basic dataphone-type" service.

"International dataphone service or its equivalent should be provided by the international record carriers." (JA 179).

• • •
"As indicated by ITT Worldcom in its response to Question (d), ITT Worldcom believes that international dataphone service is a record service, and that this service should be furnished exclusively by the international record carriers for the reasons set forth in Part I of these comments." (JA 115).

¹⁰ See FCC brief, p. 13.

gest that it might have rectified its factual mistake had the IRCs only petitioned for reconsideration. If the FCC truly wanted to reconsider the matter, it could have and, in fact, still can say no. But if the FCC has ruled with finality, there is no point to a petition for reconsideration and it is essential for this issue to be considered as part of these review proceedings.

Similarly, the fact that the comments submitted by the IRCs to the FCC characterized their proposed services, not by using the AT&T registered Dataphone trademark, but by such descriptions as "switched overseas voice-data, data-only facsimile service," and "international data voice-demand service," does not mean that there are any real differences between the "basic" services proposed by AT&T and the IRCs. Nonetheless, AT&T in its brief (at pp. 16-17) seeks to attach some significance to these different descriptions of essentially identical services. AT&T's argument is even more disingenuous than the FCC's and it likewise should be rejected.¹¹

Accordingly, the fact that some or all of the IRCs have greater aspirations than AT&T and seek to provide a wider and better range of overseas "dataphone-type" services hardly constitutes a valid justification for the FCC holding.

B. There is No Evidentiary Basis for the FCC Conclusion that in Contrast to the IRCs, AT&T is Able to Provide Overseas "Basic Dataphone-Type" Service Without Making Any Further Investment.

The FCC brief simply assumes that the FCC Order was correct in concluding that there was a meaningful disparity between the investments which the IRCs would have to

¹¹ AT&T's argument is not even factually accurate. Some of the IRCs, as shown in footnote 9, *supra*, in fact used the term "dataphone" in describing their proposed services.

make as compared to AT&T in order to provide overseas "basic dataphone-type" services. The FCC brief offers no support whatever from the record to substantiate the FCC's conclusion. The only record references are furnished by AT&T:

"... There was substantial evidence that the IRCs would incur such costs (A-122, 232, 339, Cf A-277) and that AT&T would not. (A-158)" AT&T brief, p. 34.

Analysis of the scant AT&T record references demonstrates simply that the IRCs fairly represented to the FCC their projected start-up costs and/or the factors which would determine their start-up costs in entering this new market and that AT&T, in sharp contrast, obfuscated and avoided the issue. AT&T avoided consideration of the instantaneous need which will develop for improving and upgrading its existing voice-oriented facilities to make them suitable for the more sensitive data transmissions.¹² As RCA Globcom pointed out to the FCC, it is impractical to believe that AT&T would not incur additional costs, and the costs projected by the IRCs encompassed the costs for a better caliber and more complete line of services than AT&T proposes. (JA 339-40). RCA Globcom's pragmatic explanation of its projections, apparently ignored by the FCC, warrants note:

"It is true that the international voice/record carriers will incur some additional costs in providing the service, but AT&T, contrary to its response on page 16 of its comments, would also necessarily incur costs for transmission facilities and switching plant to handle the volume of data calls it projects. In assessing the relative costs of service, however, the Commission must further compare the type of service which RCA

¹² See WUI main brief, p. 30.

Globcom is planning to offer, which is designed to accommodate the particular needs of data users, with the type of service AT&T contemplates. AT&T proposes no service enhancements or improvements (AT&T Comments p. 18). RCA Globcom, on the other hand, will apply the latest techniques for handling data through the use of a specially-programmed computer which will maximize the service advantages to be derived by the public. Among other things, we will guarantee the data customer a conditioned overseas circuit, make available a cable circuit where a satellite route may not be desirable, and monitor the circuit operating criteria while the call is in progress. In fact, AT&T may not be able to provide higher data rates without taking some of the precautions which RCA Globcom proposes and we believe it would be more costly to AT&T to do this." (JA 339-40).

Indeed, in a manual published in 1967 for its employees, AT&T virtually admitted that its Dataphone service cannot properly function without substantial ungrading and modifications in the MTS network.¹³ There, AT&T explained that the MTS network was not adequate for domestic data communications because "[t]he design criteria and network characteristics are slanted toward transmission of the human voice." *AT&T Manual*, p. 1.

"In voice communication, the talker and listener usually have a high degree of tolerance to transmission impairments. For one thing, redundancy in speech often allows the listener to supply syllables or even words missed or garbled because of noise, excess loss

¹³ *Manual prepared by Engineering Subcommittee on Transmission and Protection of the United States Independent Telephone Association and the Transmission Engineer of the American Telephone and Telegraph Company, Part 9—Design Objectives for Data Service* (2d ed. 1967) (hereafter cited as *AT&T Manual*).

or other transmission difficulties. Also people will adjust themselves (within limits) to problems in transmission by talking louder, listening more closely or asking for repeats. *Data transmission is more exacting than voice transmission for a number of reasons.* First and foremost, the data sets are really electronic idiots and do not exhibit the human characteristics the telephone network uses to advantage. The sets can not presently adjust themselves to transmission variations except within narrow limits. Further, not only are they very sensitive to the same transmission imperfections as voice, but they are also sensitive to other transmission parameters which have little effect on voice." *Ibid* (emphasis added).

The AT&T manual then enumerates nine categories of potential transmission difficulties over the MTS network and distinguishes the affect of such difficulties on data as compared to voice communications.

"Of these, only the first four usually cause serious difficulties in voice transmission. The same four items are even more important in data transmission because degradations not serious enough to prevent communication between talkers may make data transmission virtually impossible. The last five items may be of minor importance in voice transmission, but are very important to transmission of data signals." *Id.* at p. 2.

The *AT&T Manual* (at p. 3) thus concludes that the improvement of Dataphone service will necessitate that "[d]ata transmission . . . be considered when plant changes or additions are proposed" and also that "[a]long with voice transmission characteristics, transmission requirements for data should be included in all planning involving message network facilities." Nonetheless, the FCC Order simply assumed that AT&T could provide satisfactory international Dataphone over its existing facili-

ties without "substantial modifications" and simply ruled that if such modifications subsequently became desirable, AT&T would have to apply for additional authority. (JA 7). Clearly, the FCC might have reached a different view had AT&T been candid concerning the investment it will have to make and told the FCC that without additional investment, it will not be able to properly furnish Dataphone internationally.

In short, the FCC finding that AT&T would not incur any additional costs is erroneous and not supported by the record. Before opening the door for AT&T to enter the overseas record business, the FCC should have done more than simply accept AT&T's representations about its investment costs.

C. The FCC Failed to Consider that the "Unmet Need" for Overseas "Dataphone-Type" Service Resulted from the Artificial Restraints Placed on the IRCs' Datel Services.

In our main brief (esp. at pp. 4-6), we discuss extensively how the international Datel services of the IRCs would have been fulfilling the "unmet need" for overseas "dataphone-type" services long ago, but for two artificial limitations imposed on those services by the FCC and AT&T:

1. The inadequate arrangements for interconnecting Datel with AT&T's domestic MTS network; and
2. The restriction on the use of voice in Datel communications to "cue and contact control" purposes.

The FCC failed to perceive that these limitations caused the "unmet need" and granted AT&T (which was largely responsible for the limitations) the right to now fulfill the "unmet need." The FCC's act, to say the least, was both anomalous and inconsistent with its above-discussed "long standing general policy" of separating international voice and record services.¹⁴

¹⁴ FCC brief, p. 4.

It was wrong for the FCC simply to have ignored the IRCs' capabilities. Unless the FCC first considered whether and how the IRCs could satisfy the "unmet need" and why the "unmet need" exists, it could not properly rationalize its departure from its "long standing general policy."

In sum, the FCC could not have reasonably determined any policy as to whether AT&T should be permitted to enter this new overseas telecommunications market, without appreciation of the irrefutable facts (a) that the IRCs propose to offer the same overseas "dataphone-type" services as AT&T, (b) that furnishing overseas "dataphone-type" services will also inevitably require additional investments by AT&T just as it will require additional investments by the IRCs, and (c) that the IRCs would and could readily satisfy the "unmet need" upon the removal of the current artificial restraints on their Datel services. The FCC arbitrarily failed to recognize these facts and, therefore, the FCC Order should be set aside.

POINT II

THE FCC'S PERSISTENT DEFERRAL OF THE INTERCONNECTION CONTROVERSY AND THE LACK OF CLARITY AS TO WHAT "DATAPHONE-TYPE" SERVICES THE IRCs ARE ELIGIBLE TO PROVIDE REQUIRES THAT THE FCC ORDER BE SET ASIDE.

The FCC points out that it "specifically found that the public interest requires interconnection" between the IRCs' Datel services and AT&T's domestic MTS network.¹⁵ The FCC then contends that it acted rationally in asking for more comments to determine the kind of in-

¹⁵ FCC brief, p. 29.

terconnection to which the IRCs are entitled and leaving "undetermined the precise nature of the dataphone-type services to be provided by the international record carriers."¹⁶ Despite this never-ending deferral of the interconnection controversy and the lack of clarity as to what services the IRCs are eligible to provide, the IRCs, according to the FCC's logic, are amply protected by two essentially procedural mechanisms: (1) the power of the FCC to condition the grant of AT&T's Section 214 application upon AT&T entering into satisfactory interconnection arrangements with the IRCs; and (2) the right of the IRCs to seek judicial review of any subsequent FCC determinations.¹⁷

As a general rule, we might agree with the FCC. But, we believe that the circumstances of this case, particularly the repeated postponement of the interconnection issue for some ten years,¹⁸ compelled the FCC to cease frustrating the IRCs and to come to grips with the interconnection issue at the same time as it was determining to let AT&T enter this new international telecommunications market. The FCC's fragmented treatment of such an important matter is an abuse of its discretion and threatens irreparable harm to the IRCs. AT&T's sales forces are able to circle the globe advertising to the IRCs' customers and others the new service they expect to be able to implement which will provide all of the advantages of the Datel and Telex services furnished by the IRCs plus more.¹⁹ Meanwhile, the IRCs are unable to counter such efforts because they are in a quandary as to both the kind of "dataphone-type" services they will be permitted to furnish and, without a clear right to adequate interconnection, what quality

¹⁶ FCC brief, pp. 2, 28-30.

¹⁷ It is noteworthy that in subsequent FCC proceedings, AT&T has argued vigorously against any delay in processing its Section 214 application occasioned by the IRCs' interconnection requests. (PA 68).

¹⁸ See, e.g., JA 409-29; PA 75-102.

¹⁹ See discussion in WUI main brief, pp. 40-44.

and efficacy any of their offerings could have. Thus, AT&T is priming the market for its expected entry and that market does not know what, if anything, can be expected from the IRCs.

After taking 3½ years to reach its decision, the least the FCC should have done was decide the extent of interconnection to which the IRCs are entitled and the kinds of overseas "dataphone-type" services the IRCs will be eligible to provide. Unquestionably, interconnection numbered among the issues addressed by the FCC's 1972 Notice of Inquiry and the IRCs responded to it as adequately as the written comments procedure utilized by the FCC permitted. (*E.g.*, JA 247, 249-50, 269, 272-75, 377-78).²⁰ Indeed, a key point raised by the FCC in its Notice of Inquiry was that it would be more appropriate to consider the various issues relating to overseas "dataphone-type" services in an integrated proceeding, and that the issues can not properly be treated on a piecemeal basis. (JA 13). In resolving only the question of AT&T's eligibility, however, the FCC contradicted itself and failed to reach the integrated policy decision it set out to make and which the IRCs had a right to expect. Nothing in the record supports this turnabout.

If the FCC truly needed more information, it should have asked for such information before making a decision, not afterwards.²¹ It was an abuse of discretion for the

²⁰ The Notice of Inquiry, in relevant part, posed the following question:

"Whether the international record carriers should be authorized to provide overseas dataphone or an equivalent service and, in this connection,

(i) the nature of interconnection and operating arrangements and agreements that would be involved between each international record carriers and domestic carriers, including billing practices, division of tolls, etc." (JA 14-15).

²¹ As we discussed above (*supra*, pp. 9-10), had the FCC focused on the interconnection issue before finding an "unmet need," AT&T would not have been determined eligible to enter the overseas "dataphone-type" market. The further adjournment of the interconnection issue creates an even more intolerable inequity.

FCC to leave the IRCs still bewildered as to the extent and basis upon which they will be permitted to offer overseas "dataphone-type" services. The FCC Order thus should be set aside. At a minimum, however, the FCC should be stayed from processing AT&T's Section 214 application until it finally resolves the interconnection controversy and defines, with clarity, the kinds of "dataphone-type" services the IRCs may provide.

POINT III

THE FCC DID NOT PROPERLY EVALUATE THE ANTICOMPETITIVE CONSEQUENCE OF ITS DECISION.

Contrary to the assertions by the FCC and AT&T, the IRCs have not attributed an overstated importance to the anticompetitive effect of the FCC Order. The IRCs simply contend that the anticompetitive effect of the FCC decision is a significant element in determining the public interest, and that the FCC did not properly weigh this factor in deciding to allow AT&T to expand its monopoly and provide international "dataphone-type" services.

Specifically, the following points warrant mention:

1. AT&T's attempt to deprecate the concern of the IRCs that AT&T's entry into the overseas "dataphone-type" market will impair the IRCs' "bread and butter" Telex services strikes a hollow chord. For example, AT&T makes the outlandish statement that "the Commission's fear [in formulating the *TAT-4* policy] that AT&T entry into the AVD market would threaten the viability of the IRCs has proved completely unfounded."²² The statement is senseless and is completely without support in the record or anywhere else.

Furthermore, while AT&T goes to considerable extremes in trying to show that the IRCs' Telex services to Hawaii

²² AT&T brief, p. 33 (footnote omitted).

have grown notwithstanding the competition from AT&T's Dataphone service, AT&T has conspicuously avoided showing the effect of Dataphone on Telex within the United States mainland, a far more significant market and one more comparable to trans-oceanic services to the industrialized European countries and to Japan, the areas involved in this proceeding. The reason is obvious. While Dataphone has grown rapidly, domestic Telex, provided by The Western Union Telegraph Company (the domestic telegraph carrier), has leveled off substantially compared to the international Telex services offered by the IRCs.²³ The difference in growth between domestic and international Telex services is attributable, to a large degree, to the AT&T Dataphone competition which exists domestically, but not internationally.

Additionally, even with respect to the limited market represented by Hawaii, AT&T's statistics have no probative value. While AT&T is correct that the IRCs' Telex services to Hawaii have enjoyed a steady growth in revenues, this increase does not compare to that experienced by AT&T's services to Hawaii. Nor does the growth of the IRCs' Telex services to Hawaii compare well with the growth these services have experienced to areas such as the United Kingdom, where AT&T has not been permitted (until the Order under review) to provide Dataphone service. For example, between 1970 and 1973, AT&T's MTS services to Hawaii increased at the approximate rate of 2.24 times the growth of the IRCs' Telex services, whereas for the United Kingdom the increase in AT&T's MTS services was only 1.21 times the increase in the IRCs' Telex services.²⁴

²³ See *Telex in the World* 16-19, 46-47 (Siemens 1975).

²⁴ The foregoing ratios are based on statistics obtained from *FCC Statistics of Communications Common Carriers* (1970 and 1973 eds.). There are no separate statistics for AT&T's Dataphone service because AT&T simply includes it as part of its MTS operations.

Moreover, it is noteworthy that AT&T's domestic Dataphone service has experienced extremely rapid growth in spite of a restriction in the agreement by which The Western Union Telegraph Company acquired AT&T's TWX teletypewriter exchange service in 1971. Under this agreement, AT&T has been barred from offering any teletypewriters, such as a Telex machine, to be hooked up to its telephones as part of its Dataphone service.²⁵ Of course, no such restriction on AT&T would exist on the international level.

2. AT&T argues that the anticompetitive *TAT-4* policy—premised on the public interest in maintaining the viability of the IRCs—has been eroded.²⁶ AT&T purports to explain *TAT-4* as an exceptional case resulting from the following factors which existed previously but supposedly do not exist today:

"In *TAT-4*, the Commission changed its policy for several reasons. First, the IRCs were confined to 'gateways,' whereas AT&T had access to the 'hinterland.' Second, AT&T had a large sales force. Third, AT&T was large and the IRCs were small and AVD meant more to the IRCs than it meant to AT&T. Fourth, the Commission emphasized that '[t]he use by customers of leased circuits for alternate voice-record use is, with the exception of the defense agencies, a new service.'" AT&T brief, p. 32 (footnote omitted).

AT&T's attempt to distinguish *TAT-4* is unconvincing. None of the above facts cited by AT&T as existing in 1964 when *TAT-4* was decided are substantially different today.

²⁵ TWX Purchase Agreement dated as of January 31, 1969 between American Telephone and Telegraph Company and The Western Union Telegraph Company.

²⁶ AT&T brief, p. 33.

The IRCs are still confined to their "gateway" cities;²⁷ AT&T's size is still astronomical compared to that of the IRCs, particularly WUI, and the impact of overseas "dataphone-type" services will be much greater on the IRCs than on AT&T;²⁸ overseas "dataphone-type" services, like the overseas leased AVD services involved in *TAT-4*, will be new services.²⁹

3. The FCC brief (at p. 26, fn. 27) inappropriately deprecates the vigorous competition among the IRCs. Unlike AT&T, the IRCs must compete keenly for each and all of their services. Individual IRCs have repeatedly sought to gain competitive advantages through the introduction of new service features. *E.g.*, *In re RCA Global Communications, Inc.*, FCC Order No. 76-1743 (March 9, 1976). Also, there is extensive rate and service competition among the IRCs, and they always strive with dispatch to match any rate reductions or new service offerings of their com-

²⁷ For many years, WUI, RCA Globecom and ITT Worldecom have had three "gateway" cities (New York, Washington, D.C. and San Francisco). A fourth IRC, TRT Telecommunications Corp. ("TRT"), has had "gateway" operations in Miami and New Orleans. In accordance with a recent FCC decision [*International Record Carriers' Communications*, FCC Order No. 76-174 (Feb. 1976)], these four IRCs were granted temporary authority for "gateway" facilities in each other's "gateways". Applications by these four IRCs for additional "gateways" in which no IRC currently has facilities have been on file now for several years, without any indication of when or how such applications will be acted upon by the FCC.

²⁸ AT&T attempts to equate the advertising of RCA Globecom and ITT Worldecom to its own by reference to the media advertising budgets of the parent corporations of these IRCs. AT&T brief, p. 33, fn. 79. AT&T brushes over the critical distinction that the overwhelming majority of this advertising, unlike AT&T's, relates to products and/or services entirely extraneous to the telecommunications industry. Moreover, AT&T conspicuously avoids any comparison of its advertising expenses with those of WUI.

²⁹ When *TAT-4* was decided, leased AVD services had been available domestically, just as Dataphone is available domestically today. The FCC did not then consider that the domestic availability of leased AVD services made them any less "new" international services, and there is no reason for any other conclusion today with respect to international "dataphone-type" services.

petitors. See *TRT Telecommunications Corp.*, 53 F.C.C.2d 649 (1975), *aff'd sub nom. ITT World Communications Inc. v. FCC*, — F.2d — (2d Cir. 1976); *In re Leased Channel Rates for International Services*, 45 F.C.C.2d 775 (1974).

In sum, while we are cognizant that the anticompetitive aspect of the public interest is not necessarily a controlling factor in every case, we submit that it is apparent that in the instant proceedings, the FCC did not give that factor the careful consideration it requires.

Conclusion

For the foregoing reasons and those set forth in WUI's main brief, the FCC Order should be set aside.

September 27, 1976

Respectfully submitted,

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et ano.,

Respondents,

-and-

AMERICAN TELEPHONE AND TELEGRAPH
COMPANY, et al.,

Intervenors.

AFFIDAVIT OF SERVICE BY MAIL

STROOCK & STROOCK & LAVAN

Attorneys for petitioner

Western Union International, Inc.

61 BROADWAY
BOROUGH OF MANHATTAN
NEW YORK, N. Y. 10006
(212) 425-5200

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

LINDA F. SUTTON, being duly sworn, deposes and says:
deponent is not a party to the action, is over 18 years of age
and resides at 135 East 50th Street, New York, New York 10022.
That on the 30th day of July, 1975 deponent served three copies of
the annexed Reply Brief of Petitioner Western Union International
on:

General Counsel
Federal Communications Commission
Attorneys for Respondent
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Attorney General of the United States
Department of Justice-Antitrust Division
Attorneys for Respondent
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Washington, D.C. 20530

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Attorneys for Intervenor
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at the addresses designated by said attorneys for that purpose by
depositing a true copy of the same enclosed in a postpaid properly
addressed wrapper, official depository under the exclusive care and
custody of the United States post office department within the State
of New York.

Sworn to before me this
27th day of September, 1976.

Vicki Z. Armet

Notary Public

VICKI Z. ARMET
New York

Linda F. Sutton
LINDA F. SUTTON